

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

49 CFR Parts 171, 172, 173 and 178

[Docket HM-215A; Amdt. Nos. 171-132,
172-140, 173-242, and 178-107]

RIN 2137-AC42

Implementation of the United Nations
Recommendations, International
Maritime Dangerous Goods Code, and
International Civil Aviation
Organization's Technical InstructionsAGENCY: Research and Special Programs
Administration (RSPA), DOT.ACTION: Final rule; editorial revisions
and response to petitions for
reconsideration.

SUMMARY: On December 29, 1994, RSPA published a final rule which amended the Hazardous Materials Regulations to maintain alignment with corresponding provisions of international standards. Recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions or ICAO TI), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) necessitated amendments to domestic regulations to provide consistency with international transport requirements and to facilitate the transport of hazardous materials in international commerce. This final rule corrects errors in that final rule and responds to petitions for reconsideration.

DATES: *Effective:* This final rule is effective October 1, 1995. The effective date for the final rule published under Docket HM-215A on December 29, 1994 (59 FR 67390) remains October 1, 1995.

Compliance: However, compliance with the regulations is authorized from January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Beth Romo or John Gale, Office of Hazardous Materials Standards (202) 366-4488, Hazardous Materials Safety, 400 Seventh Street SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: On December 29, 1994 (59 FR 67390), RSPA published a final rule under Docket HM-215A to maintain alignment with corresponding provisions in international standards, based on recent changes to the International standards. Since publication of the final rule, RSPA has received seven petitions for

reconsideration, as well as other correspondence identifying errors. This document incorporates editorial and technical revisions to the final rule based on the merit of petitions and other revisions that RSPA has determined are necessary to correct or clarify the final rule.

Section-by-Section Review

Part 171

Section 171.14. This section was rewritten in the final rule to remove certain obsolete compliance dates for Docket HM-181 requirements and to add new transition dates for provisions adopted under Docket HM-215A. In paragraph (a)(2)(i), which delays compliance with new placard specifications until October 1, 2001, the phrases "placards specified in the December 21, 1990 final rule" and "for highway transportation only" were inadvertently omitted. RSPA did not intend to exclude placards specified in the December 21, 1990 final rule, nor to expand the scope of this transition provision to other modes; therefore, the phrases "or placards specified in the December 21, 1990 final rule" and "for highway transportation only" are reinstated in paragraph (a)(2).

Paragraph (b) introductory text, paragraph (b)(1) and paragraph (b)(2) are revised to clarify that amendments contained in this document supersede changes made in the December 29, 1994 final rule. RSPA has received numerous inquiries concerning the effective date for compliance with the latest requirements in the ICAO Technical Instructions and the IMDG Code. A Competent Authority Approval was issued on December 29, 1994, which authorizes shipments entering the U.S. by air or vessel to comply with either the 1993-1994 or 1995-1996 ICAO TI and either Amendment 26 or Amendment 27 of the IMDG Code until October 1, 1995. For export shipments, each destination country should be consulted for delayed implementation dates.

Part 172

Section 172.101: The Hazardous Materials Table. In the Hazardous Materials Table (HMT), several editorial changes are made in response to petitions for reconsideration and agency initiatives. The entry in the HMT for "Benzaldehyde" is revised by placing a "+" in the first column which fixes the hazard class for this material at Class 9. The entry "n-Butyl isocyanate" is revised to correctly identify the material as a Hazard Zone B inhalation hazard material. Aircraft quantity limitations

for "Cyanogen bromide" are revised for consistency with the ICAO TI. The "D" in the first column for PETN is removed. Special Provision 45 is removed from "Methyl Trichloroacetate" and correctly assigned to the entry "Methacrylic acid, inhibited". The entry for "Maneb, stabilized or Maneb preparations, stabilized" is revised by correctly referencing Special Provision 54 in Column (7).

RSPA received one petition for reconsideration and numerous inquiries requesting that the shipping name "Azodicarbonamide" be added to the HMT. Clarification on the applicability of the HMR to certain formulations of azodicarbonamide also was requested. This shipping name was proposed but, based on the merit of comments, was not adopted in the final rule. In the final rule, RSPA stated that this entry was "superfluous" in light of the new classification scheme for self-reactive materials. However, the petitioner correctly pointed out that this is not consistent with international standards and, without this proper shipping name, packagings containing this material which are imported into the U.S. would need to be remarked before being reshipped. Therefore, RSPA is adding the shipping name "Azodicarbonamide" to the HMT. In addition, based on this petition for reconsideration, RSPA is adding Special Provision 38, which incorporates the requirements of Special Provision 215 of the UN Recommendations for azodicarbonamide. This special provision clarifies that azodicarbonamide with a Self-accelerated decomposition temperature (SADT) of 75° C or greater is not a self-reactive material.

The entries for certain pesticides described as having a "flash point less than 23 degrees C" are revised by removing Packing Group III provisions. Based on packing group criteria provided in § 173.121, Packing Group III materials in Class 3 cannot have a flash point less than 23 degrees C; therefore, Packing Group III provisions are unnecessary.

Several entries are revised by adding, removing, or revising special provisions in Column (7). For the entries, "Jet perforating guns, charged oil well, without detonator," classed in Divisions 1.1D and 1.4D, Special Provision 55 is added. To provide consistency with revised § 173.185, Special Provisions 18 and A12 assigned to "Lithium batteries, contained in equipment" are removed from that entry and Special Provision 29 is revised. In addition, quantity limitations for passenger and cargo only

aircraft are adjusted to reflect these revisions.

Appendix B to § 172.101. In the List of Marine Pollutants as revised in the final rule, the severe marine pollutant designation "PP" is removed for the entry for "Diethylbenzenes (mixed isomers)" and is added for the entry "Copper metal powders".

Section 172.102. As discussed above, based on a petition for reconsideration, RSPA is adding Special Provision 38, which incorporates the requirements of Special Provision 215 of the UN Recommendations for azodicarbonamide. This special provision clarifies that azodicarbonamide with an SADT of 75° C or greater is not a self-reactive material. Also as discussed above, RSPA is removing Special Provisions 18 and A12 and revising Special Provision 29 for lithium batteries. In addition, RSPA is correcting Special Provision 35 to clarify that if a material assigned this special provision does not meet Division 6.1, but does meet another hazard class, it is subject to the HMR. This is consistent with international standards. Special Provision 51 is revised to indicate the quantity limitations of propellant for the different divisions for model rocket motors, and Special Provisions 55 and 56 are added to clarify that jet perforating guns with detonators must be approved and must incorporate a safety device.

Section 172.204. The certification in paragraph (a)(2) is revised to reflect the exact language contained in international standards.

Section 172.402. A footnote to the subsidiary labeling table in paragraph (a)(2) is revised to clarify that only a Class 3 Packing Group III material with a flash point at or above 38° C (100° F) being transported by highway or rail is excepted from the requirement to apply a subsidiary Class 3 label.

Part 173

Section 173.23. A new paragraph (g) is added to allow the continued use of non-bulk packagings conforming to the pre-HM-215A requirements of Subparts L and M of Part 178. This will permit authorized packagings marked with minimum, rather than nominal, thickness and not permanently marked on the bottom to remain in service.

Section 173.24. Newly adopted provisions in paragraphs (c)(1) and (d)(2), authorizing the use of UN standard packagings manufactured outside the U.S., are revised to clarify that these packagings are not subject to the specification requirements in Part 178.

Section 173.28. The requirement to mark packagings with the month leakproofness testing was performed is removed in paragraph (b)(2)(ii). This is consistent with the reconditioning marking requirement in § 178.503(c)(1)(iii), revised in the final rule to require only marking the year of reconditioning.

In the final rule, in the footnote to the table in paragraph (b)(4), RSPA adopted minimum thicknesses of 0.80 mm and 1.10 mm as the required minimum thicknesses of the steel in the side and head, respectively, of a drum. The Association of Container Reconditioners (ACR) petitioned RSPA to restore the minimum thickness requirements to 0.82 mm (0.032 inch) and 1.09 mm (0.043 inch), which were the minimum thickness requirements adopted in the December 1990 final rule under Docket HM-181. The ACR expressed concern that a 1995 or later drum bearing a "0.80" thickness marking could be a drum for which the minimum thickness is 0.8 mm but more likely could be a drum marked as nominal 0.8 mm for which the minimum thickness is actually 0.73 mm. In such a case, the drum marked as nominal 0.8 mm could not be reused or reconditioned. Conversely, the Steel Shipping Container Institute (SSCI) asked RSPA to revise the footnote to indicate a minimum thickness of 0.73 mm (0.029 inch) body and 1.01 mm (0.040 inch) head, which is the minimum for a nominal thickness of 0.80 mm and 1.10 mm, respectively. SSCI believes that use of nominal thickness would allow for consistent use of UN markings as a guide to reconditioning.

After studying both petitions, as well as the history of this footnote, RSPA has concluded that what were believed to be inconsequential differences in rounding techniques have led to the current situation. In adopting the footnote to the table in the December 1990 final rule, RSPA intended to allow drums with minimum head and body thicknesses corresponding to the minimum thicknesses for 18 and 20 gauge steel. This decision was based on the merit of comments to Notice 87-4 [May 5, 1987; 52 FR 16482] contending that steel drums used in the U.S. with 18 gauge body and 20 gauge heads have proven to be adequate for transportation and reuse. (The Notice proposed a 1.0 mm minimum thickness for both body and head for reuse.) RSPA did not intend to authorize significantly thinner drums by rounding the minimum thickness from 0.82 to 0.8 mm and understands the problems that may result from drums marked "0.8."

RSPA is not prepared to reduce the required minimum thickness to 0.73 mm, as SSCI suggested, because there is no assurance that drums with such a thickness can be reused safely. Based on the merits of comments, RSPA believes that a minimum body thickness of 0.82 mm and a minimum head thickness of 1.09 mm are the most appropriate minimum thicknesses to maintain the desired level of safety, and the footnote is revised accordingly. Because the metric measurement is the regulatory standard and the U.S. customary measurement is provided for information only, RSPA is removing the equivalent measurements in inches in the footnote to preclude further confusion. To determine an equivalent measurement in U.S. customary units, a conversion table is provided in § 171.10.

Three petitioners asked RSPA to reconsider the exception for certain plastic drums from leakproofness testing before each reuse. The Society of Plastics Industry (SPI) claimed that by adopting this provision in the final rule without specifically proposing an exception for plastic drums in the NPRM, RSPA had not provided adequate notice and opportunity to comment. Another petitioner, the Association of Container Reconditioners, also noted that adoption of the exception from leakproofness testing before reuse for certain plastic drums was "improper, having been without required notice under the Administrative Procedure Act."

Section 553(b)(3) of the Administrative Procedures Act (APA) states that:

General notice of proposed rule making shall be published in the **Federal Register** * * *. The notice shall include— * * * (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

5 U.S.C. 553(b)(3).

Section 553(c) requires that after notice has been given as required under section 553(b)(3):

* * * the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments * * *.

5 U.S.C. 553(c).

Petitioners argued that the final rule extending the exception from leakproofness testing to plastic drums differed so substantially from the proposed amendment regarding leakproofness testing that they essentially were denied notice and an opportunity to comment, as required under section 553 (b)(3) and (c). However, in the Notice of Proposed

Rulemaking (NPRM) published on July 18, 1994 (59 FR 36488), RSPA stated

Based on the merits of a petition for rulemaking (P-1133), a new paragraph [178.37](b)(7) would be added to waive retesting requirements for certain packagings used in limited operations prior to each reuse * * *. RSPA is proposing similar provisions in new paragraph (b)(7) for certain packagings to be reused without leakproof testing. Packagings would be limited to stainless steel, monel, or nickel drums (or other packagings approved by the Associate Administrator for Hazardous Materials Safety) * * *. Other packagings could qualify only if approved by the Associate Administrator for Hazardous Materials Safety.

(Emphasis added.)

Based on this statement, 34 commenters requested that the agency extend the exception from leakproofness testing to plastic drums as well as those made of stainless steel, monel or nickel.

Although section 553(b)(3) requires that a Notice of Proposed Rulemaking (NPRM) contain "either the terms or substance of the proposed rule or a description of the subjects and issues involved," it does not require an agency to publish in advance every precise proposal which it may ultimately adopt as a rule. *Daniel International Corporation v. Occupational Safety and Health Review Commission and the Secretary of Labor*, 656 F.2d 925 (4th Cir. 1981) citing *Spartan Radiocasting Co. v. F.C.C.*, 619 F.2d 314 (4th Cir. 1980) and *California Citizens Band Association v. U.S.*, 375 F.2d 43 (9th Cir. 1967), cert. denied, 389 U.S. 844, 88 S. Ct. 96 (1967). This is particularly true when proposals are adopted in response to comments from participants in the rulemaking proceeding, as is the case in this instance. The "requirement of submission of a proposed rule for comment does not automatically generate a new opportunity for comment merely because the rule promulgated differs from the rule proposed, partly at least in response to submissions." *Daniel International Corporation v. Occupational Safety and Health Review Commission and the Secretary of Labor*, 656 F.2d at 932, citing *International Harvester Co. v. Ruckelshaus*, 478 F.2d 615, 632 (D.C. Cir. 1973). "A contrary rule would lead to the absurdity that an agency could learn from comments on its proposals only at the peril of starting a new procedural round of commentary." *Id.* at 932, citing *International Harvester* at 632, n. 51.

As in *Daniel International*, the change in RSPA's requirement was made in response to comments to the NPRM. And, although the NPRM that was the

subject of *Daniel International* did not indicate that a change in application of the standard at issue was contemplated, the court nevertheless found that the filing of numerous comments on the issue suggested that the notice was adequate. The court noted that to hold otherwise would penalize the agency for benefitting from comments received and further bureaucratize the process. *Id.* at 932. In this instance, RSPA specifically stated twice that it would consider extending the leakproofness testing exception to other packagings upon request. These statements were sufficient to generate 34 comments requesting that RSPA extend the leakproofness testing exception to plastic drums. Therefore, the NPRM gave sufficient notice and an opportunity to comment on the issue of exceptions for leakproofness testing.

In its petition, in addition to the claim that RSPA violated the APA, SPI charged that adoption of this exception "could be viewed as an arbitrary and capricious abandonment of RSPA's public safety responsibility." However, in a petition for reconsideration to HM-181 submitted in 1991 by the Plastic Drum Institute (PDI), a division of SPI, the PDI noted that "plastic drums, for example, do not have a seamed type of construction that can contribute to seepage types of leakage." Furthermore, a comment to the proposed HM-181 rule cited a PDI report stating that "in 1986, the release from these (Specification 34 plastic) drums was less than .003% of the total drum shipments. Of the total gallons lost, the amount was less than .0005% of the total volume shipped." Therefore, RSPA does not agree that plastic drums that have demonstrated a very low frequency of leakage without leakproofness testing before each reuse should be subject to such testing. SPI's petition for reconsideration is, therefore, denied.

RSPA has received numerous requests to clarify provisions in the exception from leakproofness testing before reuse of certain metal and plastic drums. Of particular concern is the phrase "distribution chain controlled by the offeror" in paragraph (b)(7)(iii). The exception is intended to apply only to a drum which is in dedicated service; i.e., the drum is refilled with the same material or a material compatible with that previously contained in the drum, only the original filler may refill the drum before offering it for transportation, and the drum may only be transported in a transport vehicle or freight container that does not contain any material offered by anyone other than the filler of the drums. The drums may be transported to an unspecified

number of destinations, as long as they are not refilled by anyone other than the original filler. Otherwise, they must be leakproofness tested before they are refilled. Paragraph (b)(7) is revised to clarify the intent of the exception.

Section 173.62. One petitioner requested that RSPA reconsider the decision not to adopt a domestic shipping description for jet perforating guns, with detonator. The petitioner had requested that the description be added to the final rule. RSPA rejected the request stating "US006 only allows detonators to be transported with, not in, detonators." The petitioner, however, noted that in the NPRM published under Docket HM-166X [August 7, 1991; 56 FR 37505] RSPA stated it was revising packing method US006 to permit the transport of jet perforating guns with detonators attached. RSPA stands corrected. The HMR currently does allow, with safety features, the transport of jet perforating guns with detonators attached when approved in accordance with § 173.56. Therefore, RSPA is adding domestic shipping descriptions (Divisions 1.1D and 1.4D) for jet perforating guns with detonators attached. RSPA is adding special provisions to these description to clarify that the device must be approved in accordance with § 173.56 and it must incorporate a safety device. RSPA also is clarifying the shipping descriptions for jet perforating guns without detonators by adding a special provision that makes it clear that this item must be approved in accordance with § 173.56. In addition, in the paragraph (c) Table of Packing Methods, packing method E-142 is revised to correctly reference appropriate packaging requirements and exceptions.

Section 173.150. Paragraph (d)(2) is revised for clarity and consistency with international provisions which except from regulation alcoholic beverages in inner packagings having a capacity of five liters or less. The final rule authorized "packagings" of five liters or less, but did not specify "inner packagings". This error is corrected in this document.

Section 173.185. Paragraphs (e)(6), (h)(1), and (j) are revised to clarify certain provisions adopted under the final rule. Paragraph (e)(6) is revised to indicate that the limit of 500 g of lithium or lithium alloy in strong inner packagings is for each inner packaging. Paragraph (h)(1), which addresses cells and batteries for disposal, clarifies that the 12 g limit per cell applies to the cell when new. Paragraph (j) is revised to emphasize that provisions for transport for testing purposes do not apply to

lithium cells and batteries contained in equipment.

Sections 173.224 and 173.225. Several editorial changes are made to the Self-Reactive Materials Table in § 173.224 and the Organic Peroxide Table in § 173.225, based on petitions for reconsideration and agency initiative.

Section 173.306. Based on a provision in the UN Recommendations, RSPA proposed and incorporated a hot water bath test for aerosol containers in paragraph (a)(3)(v). By adopting provisions identical to those contained in the UN Recommendations, RSPA failed to remove wording referring to certain non-specification plastic aerosol containers. The final rule made no revisions to paragraphs (a)(3) and (a)(3)(ii), which specify only metal containers. Based on a request to clarify these provisions, RSPA is amending paragraph (a)(3)(v) to remove all references to plastic containers.

Part 178

Section 178.503. In paragraph (e)(3), the example of a UN marking for reconditioned packagings is revised to indicate that only the last two digits of the year the packaging was reconditioned are required as part of the marking.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered to be a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. The original regulatory evaluation of the final rule was reexamined but was not modified because the changes made under this rule will result in minimal economic impact on industry.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain covered subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(A) The designation, description, and classification of hazardous materials;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(E) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule concerns classification, packaging, labeling, marking, shipping documentation, and manufacture of packaging for hazardous material. Therefore, this final rule preempts State, local, or Indian tribe requirements that are not substantively the same as Federal requirements on these subjects.

Section 5125(b)(2) of title 49 U.S.C. provides that when DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be October 1, 1995. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This rule revises certain provisions incorporated into the Hazardous Materials Regulations based on changes introduced in the seventh and eighth revised editions of the UN Recommendations, the 1993–1994 and 1995–1996 ICAO Technical Instructions, and Amendments 26 and 27 to the IMDG Code. It applies to offerors and carriers of hazardous materials and facilitates the transportation of hazardous materials in international commerce by providing consistency with international requirements. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) under OMB control number

2137–0034 for shipping papers and 2137–0557 for approvals.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicles safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 172, 173 and 178 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.14, as revised at 59 FR 67407, on December 29, 1994, a new sentence is added after the first sentence of paragraph (b) introductory text to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(b) * * * A final rule published in the **Federal Register** on May 18, 1995, effective October 1, 1995, further amended the December 29, 1994 final rule. * * *

* * * * *

§ 171.14 [Amended]

3. In addition, in § 171.14, as revised at 59 FR 67407, the following changes are made:

a. In paragraph (a)(2)(ii), the wording "September 30, 1991, may be used in place of " is revised to read "September 30, 1991 or placards specified in the December 21, 1990 final rule may be used, for highway transportation only, in place of".

b. In paragraph (b) introductory text, at the end of the last sentence, the wording "as amended in the final rule published in the **Federal Register** on May 18, 1995 is added.

c. In paragraph (b)(1), the wording "December 29, 1994, final rule" is

revised to read "December 29, 1994 final rule, as amended in the May 18, 1995 final rule".

d. In paragraph (b)(2) introductory text, the wording "by the December 29, 1994, rule," is revised to read "by the December 29, 1994 rule, as amended by the May 18, 1995 rule,".

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

4. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. In § 172.101, as amended at 59 FR 67408, the Hazardous Materials Table is amended by removing or adding in alphabetical order the following entries to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

SECTION 172.101.—HAZARDOUS MATERIALS TABLE

Sym-bols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Pack-ing group	Label(s) re-quired (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Ex-ceptions	Non-bulk pack-aging	Bulk pack-aging	Pas-senger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
*		*		*		*		*		*		*	
Arsenical pes-ticides, liquid, flammable, toxic, <i>flash point less than 23 de-grees C.</i>		* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
*		*		*		*		*		*		*	
[REMOVE]	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
*		*		*		*		*		*		*	
Benzoic deriva-tive pes-ticides, liquid, flammable, toxic, <i>flash point less than 23 de-grees C.</i>		* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
*		*		*		*		*		*		*	
[REMOVE]	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40

SECTION 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Sym-bols	Hazardous ma-terials descrip-tions and prop-er shipping names	Haz-ard class or Di- vision	Identi- fication Num- bers	Pack- ing group	Label(s) re- quired (if not excepted)	Spe- cial provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Ex- cep- tions	Non- bulk pack- aging	Bulk pack- aging	Pas- senger aircraft or rail- car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	* Mercury based pesticides, liquid, flam- mable, toxic, <i>flash point less than 23 degrees C.</i>	* ***	* ***	* ***	* ***	* ***		*			*		*
	[REMOVE]								*				*
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	* Organochlorine pesticides liquid, flam- mable, toxic, <i>flash point less than 23 degrees C.</i>	* ***	* ***	* ***	* ***	* ***		*			*		*
	[REMOVE]								*				*
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	* Organophos- phorous pes- ticides, liquid, flammable, toxic, <i>flash point less than 23 de- grees C.</i>	* ***	* ***	* ***	* ***	* ***		*			*		*
	[REMOVE]								*				*
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	

SECTION 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Sym-bols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Pack-ing group	Label(s) re-quired (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Ex-ceptions	Non-bulk pack-aging	Bulk pack-aging	Pas-senger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	*	*	*	*	*	*	*	*	*	*	*	*	*
	Substituted nitrophenol pesticides, liquid, flammable, toxic, flash point less than 23 degrees C.	***	***	***	***	***	***	***	***	***	***	***	***
	[REMOVE]	*		*		*		*		*		*	
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	[ADD]	*		*		*		*		*		*	
	Azodicarbamide.	4.1	UN3242	II	FLAMMABLE SOLID.	38	151	212	240	Forbidden.	Forbidden.	D	12, 61, 74
D	Jet perforating guns, charged oil well, with detonator.	1.1D	NA0124	II	EXPLOSIVE 1.1D.	D55, 56	None	62	None	Forbidden.	Forbidden.	A	24E
D	Jet perforating guns, charged oil well, with detonator.	1.4D	NA0494	II	EXPLOSIVE 1.4D.	55, 56.	None	62	None	Forbidden	Forbidden	B	

§ 172.101 [Amended]

6. In addition, in § 172.101, in the Hazardous Materials Table, as amended at 59 FR 67408, the following changes are made:

a. For the entry "Benzaldehyde", in Column (1), a "+" is added.

b. For the entry "n-Butyl isocyanate", in Column (7), Special Provisions "1", "B30", "B72" and "T44" are removed and Special Provisions "2", "B32", "B74" and "T45" are added in their place; and in Column (8B), the reference "226" is revised to read "227".

c. For the entry "Cotton", in Column (4), the identification number "NA1365" is added.

d. For the entry "Cotton, wet", in Column (4), the identification number "UN1365" is added.

e. For the entry "Coumarin derivative pesticides, liquid, toxic, flammable, flashpoint less than 23 degrees C", the wording "flashpoint less than" is revised to read "flash point not less than".

f. For the entry "Cyanogen bromide", in Column (9A), the wording "Forbidden" is revised to read "1 kg",

and in Column (9B) the wording "Forbidden" is revised to read "15 kg".

g. For the entry "Isopentane, see n-Pentane", in Column (2), the wording "n-Pentane" is revised to read "Pentane".

h. For the entry "Jet perforating guns, charged oil well, without detonator", Special Provision "55" is added in Column (7), and for the entry "Jet perforating guns, charged, oil well, without detonator", Special Provision "55," is added in Column (7) before "114".

i. For the entry "Lithium batteries, contained in equipment", in Column

(7), Special Provisions "18" and "A12" are removed; in Column (9A) the word "Forbidden" is removed and the wording "5 kg" is added in its place; and in Column (9B), the wording "See A12" is removed and the wording "5 kg" is added in its place.

j. For the entry "Lithium battery", in Column (9A), the wording "Forbidden" is removed and the wording "5 kg" is added in its place.

k. For the entry "Maneb stabilized or Maneb preparations, stabilized *against self-heating*" in Column (7), Special Provision "53" is revised to read "54".

l. For the entry "Methacrylic acid, inhibited", in Column (7), Special Provision "45," is added before "T8".

m. For the entry "Methyl trichloroacetate", in Column (7), Special Provision "45," is removed.

n. For the entry "Pentaerythrite tetranitrate, wetted or Pentaerythritol tetranitrate, wetted, or PETN, wetted with not less than 25 percent water, by mass, or Pentaerythrite tetranitrate, or Pentaerythritol tetranitrate or PETN, desensitized with not less than 15 percent phlegmatizer by mass" the "D" in Column (1) is removed.

Appendix B to § 172.101 [Amended]

7. In Appendix B to § 172.101, as amended at 59 FR 67485, in the List of Marine Pollutants, the following changes are made:

a. For the entry "Copper metal powder", in Column (1), "PP" is added.

b. For the entry "Diethylbenzenes (mixed isomers)", in Column (1), "PP" is removed.

8. In § 172.102, in paragraph (c)(1), Special Provision 18 is removed, Special Provision 29 is revised, Special Provision 51, as added at 59 FR 67485, is revised, and Special Provisions 38, 55 and 56 are added; and in paragraph (c)(2), Special Provision A12 is removed, to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

29 Lithium cells and batteries and equipment containing or packed with lithium cells and batteries which do not comply with the provisions of § 173.185 of this subchapter may be transported only if they are approved by the Associate Administrator for Hazardous Materials Safety.

* * * * *

38 If this material shows a violent effect in laboratory tests involving heating under confinement, the labeling requirements of Special Provision 53 apply, and the material must be packaged in accordance with

packing method OP6B in § 173.225 of this subchapter. If the SADT is higher than 75° C, the technically pure substance and formulations derived from it are not self-reactive materials.

* * * * *

51 This description applies to items previously described as "Toy propellant devices, Class C" and includes reloadable kits. Model rocket motors containing 30 grams or less propellant are classed as Division 1.4S and items containing more than 30 grams of propellant but not more than 62.5 grams of propellant are classed as Division 1.4C.

* * * * *

55 This device must be approved in accordance with § 173.56 of this subchapter by the Associate Administrator for Hazardous Materials Safety.

56 A means to interrupt and prevent detonation of the detonator from initiating the detonating cord must be installed between each electric detonator and the detonating cord ends of the jet perforating guns before the charged jet perforating guns are offered for transportation.

* * * * *

§ 172.102 [Amended]

9. In addition, in § 172.102(c)(1), as amended at 59 FR 67485, Special Provision 35 is amended by removing the wording "are not subject to the requirements of this subchapter" and adding in its place "do not meet the definition of Division 6.1".

10. In § 172.204, paragraph (a)(2) is revised to read as follows:

§ 172.204 Shipper's certification.

(a) * * *

(2) "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labelled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations."

* * * * *

§ 172.402 [Amended]

11. In § 172.402, as amended at 59 FR 67490, in paragraph (a)(2), in the footnotes following the table, the footnote identified as "*" is revised to read "Required for all modes, except for a material with a flash point at or above 38° C (100°F) transported by rail or highway".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for Part 173 continues to read as follows:

Authority: 49 App. U.S.C. 5101–5127; 49 CFR 1.53.

13. In § 173.23, a new paragraph (g) is added to read as follows:

§ 173.23 Previously authorized packaging.

* * * * *

(g) A non-bulk packaging manufactured, tested, marked, and certified on or before September 30, 1996, in accordance with the applicable provisions of subparts L and M of part 178 of this subchapter in effect on September 30, 1995, may be used as authorized by this subchapter if the packaging conforms to all requirements applicable at the time of manufacture. In addition, such a packaging may be reused as authorized by § 173.28 without a nominal thickness marking, if it conforms to the minimum thickness criteria prescribed in § 173.28(b)(4).

§ 173.24 [Amended]

14. In § 173.24, as amended at 59 FR 67491, the following changes are made:

a. In paragraph (c)(1), the wording "(including U.N. standard packagings manufactured in the United States)" is revised to read "(but not including UN standard packagings manufactured outside the United States)".

b. In paragraph (d)(2) introductory text, the wording "used as an authorized packaging" is revised to read "used and is considered to be an authorized packaging".

15. In § 173.28, as amended at 59 FR 67491, paragraph (b)(7)(iii) is redesignated as paragraph (b)(7)(iv), a new paragraph (b)(7)(iii) is added and paragraph (b)(7) introductory text, paragraph (b)(7)(i) and paragraph (b)(7)(ii) are revised, to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(b) * * *

(7) Notwithstanding the provisions of paragraph (b)(2) of this section, a packaging otherwise authorized for reuse may be reused without being leakproofness tested with air provided the packaging—

(i) Is refilled with a material which is compatible with the previous lading;

(ii) Is refilled and offered for transportation by the original filler;

(iii) Is transported in a transport vehicle or freight container under the exclusive use of the refiller of the packaging; and

* * * * *

§ 173.28 [Amended]

16. In addition, in § 173.28, the following changes are made:

a. In paragraph (b)(2)(ii), in the first sentence, the wording "month and" is removed.

b. In paragraph (b)(4), as revised at 59 FR 67491, in Footnote 1 following the table, the wording "0.80 mm (0.03 inch) body and 1.10 mm (0.043 inch) heads" is revised to read "0.82 mm body and 1.09 mm head".

17. In § 173.62, in paragraph (b), the Explosives Table is amended by adding the following entry in appropriate alpha-numerical sequence to read as follows:

§ 173.62 Specific packaging requirements.

* * * *

(b) * * *

EXPLOSIVES TABLE

Identification No.	Packing methods
[ADD]. NA0494	US006

* * * *

§ 173.62 [Amended]

17a. In addition, in § 173.62, as amended at 59 FR 67492, in paragraph (c) "Table of Packing Methods", for the entry "E-142", in Column (4), "40, D11, D39" is revised to read "41, D9, D11".

§ 173.150 [Amended]

18. In § 173.150, as amended at 59 FR 67508, in paragraph (d)(2), the wording "a packaging of five liters" is revised to read "an inner packaging of five liters".

§ 173.185 [Amended]

19. In § 173.185, as revised at 59 FR 67509, the following changes are made:

a. In paragraph (e)(6), at the end of the first sentence, after the word "alloy", the wording "per inner packaging" is added.

b. In paragraph (h)(1), after the word "Cells", the wording "when new," is added.

c. In paragraph (j), in the first sentence, after the wording "testing purposes," the wording "when not contained in equipment," is added.

20. In § 173.224, as revised at 59 FR 67511, at the end of the paragraph (b) table, a new Note 3 is added to read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

* * * *

(b) * * *

Self-Reactive Materials Table

* * * *

Notes:

* * * *

3. The emergency and control temperatures must be determined in accordance with § 173.21(f).

§ 173.224 [Amended]

21. In addition, in § 173.224, as revised at 59 FR 67511, in the table in paragraph (b), the following changes are made:

a. For the entries "Azodicarbonamide formulation type B", "Azodicarbonamide formulation type C" and "Azodicarbonamide formulation type D", in Column (7), "3" is added.

b. For the entry "2,2'-Azodi(isobutyronitrile)", in Column (1), "2,2'" is revised to read "2,2'", and in Column (6), the emergency temperature "45" is revised to read "+45".

c. For the entry "2,2'-Azodi(2-methylbutyronitrile)", in Column (1), "2,2'" is revised to read "2,2'".

d. For the entries "1,1-Azodi(hexahydrobenzonitrile)", "Benzene-1,3-disulphohydrazide, as a paste", "Benzene sulphohydrazide", "4-(Benzyl(ethyl)amino)-3-ethoxybenzenediazonium zinc chloride", and "3=Chloro-4=Diethylamino-benzenediazonium zinc chloride", in Column (2), the identification number "3236" is revised to read "3226" each place it appears.

e. For the entry "4-Methylbenzenesulphonylhydrazide", in Column (2), the identification number "3226" is removed and replaced with the identification number "3236".

f. In the Notes following the paragraph (b) table, in Note 2, the wording "substance type C" is revised to read "substance type B".

§ 173.225 [Amended]

22. In § 173.225, as amended at 59 FR 67513, in the Organic Peroxides Table in paragraph (b), the following changes are made:

a. For the first entry for "tert-Butyl monoperoxymaleate as a paste", ID Number "UN3108", in Column (8), Note "21" is removed.

b. For the second entry for "tert-Butyl monoperoxymaleate as a paste", in Column (2), the ID Number "UN3010" is removed and replaced with the ID Number "UN3110", and in Column (8), Note "21" is removed and replaced with Note "7".

c. In the entry for "tert-Butyl peroxydiethylacetate and tert-Butyl peroxybenzoate", in Column (6), the entry "OP7" is revised to read "OP7A", and the "A" in Column (7a) is removed.

d. For the entry "tert-Butyl peroxyneodecanoate as a paste" the phrase "as a paste" is removed and replaced with the phrase "as a stable dispersion in water" and, in Column (8), Note "21" is removed and the entry is placed in alphabetical order.

e. For the entry "tert-Butyl peroxyneodecanoate as a paste (frozen)", in Column (8), Note "21" is removed.

f. For the second entry for "p-Menthyl hydroperoxide", in column (4a), the concentration percent "≤44" is revised to read ">44".

g. In Note 1, at the end of the table, after "is authorized", the wording "for liquids and OP8B is authorized for solids" is added.

h. In Note 9, reference to the section "§ 173.225(e)(3)(c)(ii)" is removed and replaced with reference to "§ 173.225(e)(3)(ii)".

i. In Footnote 12, the words "type C," are removed and replaced with the words "type B,".

§ 173.306 [Amended]

23. In § 173.306, as amended at 59 FR 67517, on December 29, 1994, in paragraph (a)(3)(v), the following changes are made:

a. In the second sentence, the wording "or if the containers are made of plastic material which softens at this test temperature," is removed.

b. In the last sentence, the wording "except that a plastic container may be deformed through softening provided that it does not leak." is removed and the comma following the word "occur" is replaced with a period.

PART 178—SPECIFICATIONS FOR PACKAGINGS

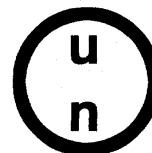
24. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

§ 178.503 [Amended]

25. In § 178.503, as amended at 59 FR 67520, on December 29, 1994, in paragraph (e)(3), the illustration is revised as follows:

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1A1/Y1.4/150/92
USA/RB/93 RL

BILLING CODE 4910-60-C

Issued in Washington, DC on May 10, 1995, under authority delegated in 49 CFR part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

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